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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ORACLE AMERICA, INC., a Delaware
corporation; ORACLE INTERNATIONAL
CORPORATION, a California corporation,

Plaintiffs,

v.

BERND APPLEBY; JAMES OLDING;
TERIX COMPUTER COMPANY, INC., a
California corporation; TUSA, INC., a
Delaware corporation; ERMINE IP, INC., a
Delaware corporation; and ERMINE
SERVICES, LLC, a Delaware company; and
DOES 1–50,

Defendants.

No. 3:16-cv-02090-JST

**~~PROPOSED~~ STIPULATED
JUDGMENT**

1 Plaintiffs Oracle America, Inc., and Oracle International Corporation (“Oracle” or
2 “Plaintiffs”) and Defendants Bernd Appleby (“Appleby”), James Olding (“Olding”), TERiX
3 Computer Company, Inc. (“Terix”), TUSA, Inc. (“TUSA”), Ermine IP, Inc. (“Ermine IP”), and
4 Ermine Services, LLC (“Ermine Services”) (collectively, “Defendants”), through their
5 undersigned counsel, hereby stipulate and move this Court for entry of judgment.

6 Accordingly, IT IS HEREBY ADJUDGED AND ORDERED that:

- 7 1. Oracle and Defendants have entered into a Settlement Agreement to resolve this
8 action, and these parties have agreed on the terms of this Stipulated Judgment.
- 9 2. On Oracle’s claims against Defendants for copyright infringement (17 U.S.C.
10 § 106), alter ego liability, and violations of the California Uniform Voidable
11 Transactions Act (Cal. Civ. Code § 3439 et seq.) Oracle shall recover from
12 Defendants the following monetary and equitable relief:
 - 13 a. Oracle shall recover from Defendants in the amount of fifty seven million
14 four hundred twenty-three thousand U.S. dollars (USD \$57,423,000.00).
 - 15 b. Defendants, as well as their officers, agents, employees, and all those
16 acting under their control or on their behalf, as well as any entity that
17 acquires or merges with Terix Computer Service (i.e., the existing
18 business and its assets, previously owned by Terix Computer Company,
19 Inc., and now owned by TUSA, Inc., Ermine IP, Inc., and Ermine
20 Services, LLC, by whatever name it might later have), are hereby
21 permanently enjoined as follows:
 - 22 i. They shall not give, sell, or otherwise provide to anyone any
23 Oracle/Sun software and/or software support materials, including
24 any updates, bug fixes, patches, media kits, or other proprietary
25 software support materials, and including any patches, bug fixes,
26 or updates to the Solaris Operating System or for firmware on
27 Oracle/Sun hardware, but not including any materials made
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publicly available by Oracle at the time of such provision by Defendants (collectively “Software and Support Materials”). Nor shall Defendants engage, retain, contract for, or otherwise utilize any third party to give, sell, or otherwise provide to anyone any Software and Support Materials. Defendants may retain third-parties to test the functionality of hardware parts acquired lawfully for break/fix purposes on the open market.

ii. They shall not access or log into any password-protected portion of any Oracle website or any Oracle FTP site, whether on its own behalf or as an agent or a contractor for any end user customer or other third party. Likewise, they shall not engage, retain, contract for, or otherwise utilize any third party to access or log into any password-protected portion of any Oracle website or any Oracle FTP site.

iii. They shall not give, sell, or otherwise provide any user credentials, IDs, or passwords to access any password-protected portion of any Oracle website to any other party. Nor shall they engage, retain, contract for, or otherwise utilize any third party to give, sell, or otherwise provide any user credentials, IDs, or passwords to access any password-protected portion of any Oracle website to any other party.

iv. They shall not direct, advise, or recommend any customer or third party to copy or use any Software or Support Materials in violation of any Oracle policy or agreement.

v. They shall not make any representations to any third party, either affirmatively or in response to an inquiry, that state or imply that they can provide or has access to, can access, or can obtain

Software and Support Materials.

- vi. They shall allow Oracle to perform an annual audit of their work relating to Oracle/Sun hardware for the next five (5) years. Defendants shall maintain complete and detailed records regarding its performance of any and all support services on Oracle/Sun hardware in its customer support record system, shall retain all emails sent to or from its support personnel concerning Oracle/Sun products, and shall disclose such records and emails in any audit conducted by Oracle to enable Oracle to determine whether Defendants have complied with the terms of this Stipulated Judgment.
- vii. They shall provide a copy of this Stipulated Judgment to all of Defendants' personnel. They shall take appropriate disciplinary action against known violators of the restrictions regarding the Software and Support Materials set forth in this Stipulated Judgment.

3. As between Oracle, on the one hand, and Defendants, on the other, each shall bear its own costs and attorneys' fees, except as specified in paragraph 5 below.
4. Oracle and Defendants waive any rights to appeal this Stipulated Judgment.
5. The Court retains jurisdiction over any action to enforce this Stipulated Judgment. In any such action, the prevailing party shall be entitled to reasonable attorneys' fees and costs. Oracle and Defendants request that in any future action to enforce or resolve any disputes relating to this Stipulated Judgment, the Court refer the matter to the Hon. Jon S. Tigar for all purposes provided he is available.
6. This Stipulated Judgment adjudicates all claims in this litigation, and is a final judgment.

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2 Dated: March 13, 2017

MORGAN, LEWIS & BOCKIUS LLP
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Spencer H. Wan

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5 By: /s/ Thomas S. Hixson
Thomas S. Hixson
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8
9 Dated: March 13, 2017

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15 Dated: March 13, 2017

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Monique D. Jewett-Brewster

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17 By: /s/ Monique D. Jewett-Brewster
Monique D. Jewett-Brewster
Attorneys for Defendant
Terix Computer Company, Inc.

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20 IT IS SO ORDERED.

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22 DATED: March 13, 2017

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Hon. Jon S. Tigas
United States District Judge

ATTESTATION

I, Thomas S. Hixson, am counsel for Oracle America, Inc. and Oracle International Corporation. I am the registered ECF user whose username and password are being used to file this Stipulation. In compliance with LR 5-1(i)(3), I hereby attest that the above-identified counsel concurred in this filing.

Dated: March 13, 2017

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Thomas Hixson

Thomas S. Hixson
Attorneys for Plaintiffs
Oracle America, Inc. and Oracle International
Corporation